

January 28, 2009

Chairman Kelly Gebhardt
and members of the Senate Natural Resources Committee
Montana Senate
P.O. Box 200400
Helena Mt 59620-0400

SENATE NATURAL RESOURCES

EXHIBIT NO. 24

DATE Jan. 28, 2009

BILL NO. SB 147

RE: SB 147

Dear Chairman Gebhardt and members of the Natural Resources Committee,

The Missoula City-County Health Department supports Senate Bill 147, revising the Comprehensive Environmental Cleanup and Responsibility Act (CECRA). This bill makes several changes to improve administration of CECRA. We respectfully request the following amendments so that we may offer this bill our full support

75-10-706 (3) A person who is not subject to an administrative or judicial order issued pursuant to this part may not conduct or arrange for any remedial action at any the facility that is subject to ~~an that~~ administrative or judicial order ~~issued pursuant to this part without the written permission of~~ without providing the department a written notice of intent to conduct or arrange for remedial action and fully describing the action to be taken at least 30 days prior to commencing the remedial action. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources. The Department may issue an order under 75-10-711(4), to cease and desist or modify the proposed remedial action as necessary to coordinate remedial actions between the potentially liable party and others who propose remedial actions and protect the public health, safety or welfare or the environment.
(proposed amendments shown in double underline text).

Senate Bill 147 would modify the existing statutory requirement for a person who is not under order at a State CECRA site to obtain approval of the Montana Department of Environmental Quality before initiating remedial action. The requirement only applies to those sites which are under administrative or judicial order. SB 147 would allow the person to initiate remedial action only after providing DEQ written notice 30 days prior to conducting the remedial action. The remedial action would not be required to be fully described to the DEQ, and DEQ approval of the remedial action would not be required prior to commencing the action.

There are 209 listed State CECRA Superfund sites in Montana. Eighteen of those sites have serious enough contamination to have warranted administrative or judicial order for remedial action.

One of the Eighteen CECRA Superfund sites administrative or judicial order is in Missoula County, the former Missoula White Pine Sash site. At this site wood preservatives containing pentachlorophenol and dioxin contaminants were used to treat window frames, and these substances have contaminated soils and groundwater at the site.

The existing Section 75-10-706 (3) was adopted by the 2003 Montana Legislature. Soon after that, in 2004, a party not under order at the White Pine Sash site had acquired a portion of the property and initiated soil excavation work at the site without DEQ approval. This section of law was used, appropriately, by DEQ to require the new owner to stop work, conduct an appropriate assessment of the site and submit plans for the remedial action. Ultimately, the owner successfully completed the assessment and cleanup of the site with appropriate DEQ oversight. A portion of the site will be used for commercial land use, and cleanup of a portion of the site was completed to residential standards. The owner initiated backfilling that portion of the site this month, and the site will ultimately be used as an athletic field. This is a success story, and an example of how the process should work. DEQ and the landowner should be credited and thanked for this accomplishment.

If the Comprehensive Environmental Cleanup and Responsibility Act had not contained the requirement for DEQ approval prior to remedial action, this work may never have been accomplished. The landowner would have proceeded with excavation and construction work without appropriate safeguards for worker protection, contaminated soils may never have been assessed, and cleanup of the site may not have been completed to appropriate commercial and residential standards. This portion of the White Pine Site would remain unaddressed by CECRA, sixteen years after the site was added to the State Superfund list, and the new owner would face potential liability caused by its actions.

The White Pine site was listed by CECRA in 1993. Since then, the potentially liable party has sold the property to three separate landowners and closed the mill. Each of those parties would like to proceed, after more than fifteen years, with some sort of beneficial economic activity on their properties.

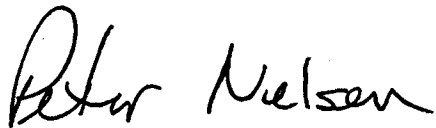
Several years ago, one of the new owners initiated a plan to convey the property to yet another owner who proposed development of a residential subdivision on the property. Neither of these parties are under order from DEQ at the site. It is unfathomable that the DEQ could possibly allow these parties to conduct the excavation and roadbuilding work necessary to develop a residential subdivision in an area with levels of contaminants that exceed human health standards. But, Senate Bill 147 would conceivably allow a part to proceed with work at the site 30 days after providing DEQ with written notice. Instead, due in large part to the existing language in the Statute, the parties were compelled to seek DEQ approval of an assessment and remediation plan for the property, where soils are contaminated with pentachlorophenol and dioxin. Development of the site has not yet been completed however, and we feel that it is important to maintain appropriate oversight of remedial actions that may be conducted by third parties at this site.

We disagree with DEQ's suggestion that review of remedial actions at State Superfund sites would result in an inappropriate workload. The Department should prioritize review of remedial actions at State superfund sites, especially at those 18 sites that are contaminated enough to justify cleanup orders to liable parties.

We respectfully request that Senate Bill 147, which contains several other appropriate revisions to CECRA, be amended to maintain appropriate review and approval of remedial actions at those State Superfund sites which are significantly contaminated to justify the Montana DEQ to issue orders for remedial action. This will ensure protection of public health and environment, and coordination of remedial action work with responsible parties who are subject to State orders for remedial action. Authority to issue cease and desist orders is included in Section 75-10-711(4) of CECRA, and should be referenced in Section 75-10-706 which indicates the purpose and intent of notice requirements under CECRA. The proposed amendment would also emphasize the need to carefully consider how a proposed remedial action at a site under order will be coordinated with actions to be conducted by liable parties who are subject to State or Judicial orders at the site.

Thank you for considering these comments and requested amendments.

Sincerely,

A handwritten signature in black ink that reads "Peter Nielsen". The signature is written in a cursive, flowing style.

Peter Nielsen
Environmental Health Supervisor